

Bilateral Investment Treaty between Benin and China

Signed on February 18, 2004

DEZAN SHIRA & ASSOCIATES

Corporate Establishment, Tax, Accounting & Payroll Throughout Asia

This document was downloaded from the Dezan Shira & Associates' Online Library and was compiled by the tax experts at Dezan Shira & Associates (www.dezshira.com).

Dezan Shira & Associates is a specialist foreign direct investment practice, providing corporate establishment, business advisory, tax advisory and compliance, accounting, payroll, due diligence and financial review services to multinationals investing in emerging Asia.



ASIA BRIEFING

www.asiabriefing.com

Established in 1999, Asia Briefing Ltd. (www.asiabriefing.com) is a Dezan Shira & Associates wholly-owned subsidiary dedicated to providing individuals and enterprises with the latest business and regulatory news as well as expert commentary relating to conducting business in emerging Asia.

The Government of the People's Republic of China and the Government of the Republic of Benin

The Government of the People's Republic of China and the Government of the Republic of Benin (hereinafter referred to as the Contracting Parties), Desiring to create favorable conditions for investment by investors of one Contracting Party in the territory of the other Contracting Party; Recognizing that the reciprocal encouragement, promotion and protection of such investment on the basis of equality and mutual benefits will be conducive to stimulating business initiative of the investors and will increase prosperity in both States; Convinced that the promotion and protection of these investments would succeed in stimulating transfers of capital and technology between the two States in the interest of their economic development; Aware that each Contracting Party is entitled to stipulate the laws on the establishment and administration of the investment in its territory; Have agreed as follows:

Article 1 DEFINITIONS For the purpose of this Agreement,

1, The term "investment" means every kind of asset invested by investors of one Contracting Party in accordance with the laws and regulations of the other Contracting Party in the territory of the latter, and in particular, though not exclusively, includes:

(a) movable and immovable property and other property right such as mortgages, pledges, liens, usufructs and similar rights;

(b) shares, debentures, stock and any other kind of participation in companies;

(c) claims to money or to any other performance having an economic value associated with an investment;

(d) intellectual and industrial property rights, in particular, copyrights, patents, trade-marks, trade-names, technical process, know-how and good-will;

(e) business concessions conferred by law or under contract permitted by law, including concessions to search for, cultivate, extract or exploit natural resources. Any change in the form in which assets are invested does not affect their character as investments provided that such change is in accordance with the laws and regulations of the Contracting Party in whose territory the investment has been made.

2, The term "investor" means,

(a) natural person who, in accordance with the laws of the people's Republic of China or of the Republic of Benin, has nationality of the People's Republic of China or of the Republic of Benin respectively;

(b) legal entity, including company, association, partnership and other organizations, incorporated or constituted under the laws and regulations of the People's Republic of China or of the Republic of Benin and having its registered office in the territory of the People's Republic of China and the Republic of Benin respectively.

3, The term "return" means the amounts yielded from investments, including profits, dividends, interests, capital gains, royalties, fees and other legitimate income.

4, The term "territory" means the territory of each Contracting Party as well as the maritime zones adjacent to the external demarcation of the territorial sea, in which each of Contracting Parties, in accordance with international law, exercise sovereign rights and/or jurisdiction.

Article 2 PROMOTION AND PROTECTION OF INVESTMENT

1, Each Contracting Party shall endeavor to promote investments made by investors of the other Contracting Party in its territory and, shall admit and protect such investments in accordance with its laws and regulations.

2, Investments of the investors of either Contracting Party shall enjoy the full and complete protection and safety in the territory of the other Contracting Party.

3, Investments of investors of each Contracting Party shall all the time be accorded fair and equitable treatment in the territory of the other Contracting Party.

4, Without prejudice to its laws and regulations, neither Contracting party shall take any unreasonable or discriminatory measures against the management, maintenance, use, enjoyment and disposal of the investments by the investors of the other Contracting Party.

5, Subject to its laws and regulations, one Contracting Party shall provide assistance and facilities for obtaining visas and working permit to nationals of the other Contracting Party engaging in activities associated with investments made in the territory of that Contracting Party.

Article 3 NATIONAL TREATMENT AND MOST-FAVORED-NATION TREATMENT

1, Without prejudice to its laws and regulations, each Contracting Party shall accord to investments and activities associated with such investments by the investors of the other Contracting Party treatment not less favorable than that accorded to the investments and associated activities by its own investors.

2, Neither Contracting Party shall subject investments and activities associated with such investments by the investors of the other Contracting Party to treatment less favorable than that accorded to the investments and associated activities by the investors of any third State.

3, The provisions of Paragraph 2 of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege by virtue of :

- (a) any customs union, free trade zone, economic union and any international agreement resulting in such unions, or similar institutions;
- (b) any international agreement or arrangement relating to taxation;
- (c) any arrangements for facilitating small scale frontier trade in border areas.

Article 4 EXPROPRIATION

1, Neither Contracting Party shall expropriate, nationalize or take other similar measures (hereinafter referred to as "expropriation") against the investments of the investors of the other Contracting Party in its territory, unless the following conditions are met:

- (a) for the public interests;
- (b) under domestic legal procedure;
- (c) without discrimination;
- (d) against compensation.

2, The compensation mentioned in Paragraph 1 of this Article shall be equivalent to the value of the expropriated investments immediately before the expropriation is taken or the impending expropriation becomes public knowledge, whichever is earlier. The value shall be determined in accordance with generally recognized principles of valuation. The compensation shall include interest at a normal commercial rate from the date of expropriation until the date of payment. The compensation shall also be made without delay, be effectively realizable and freely transferable.

Article 5 COMPENSATION FOR DAMAGES AND LOSSES Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflicts a state of national emergency, insurrection, riot, revolt or other similar events occurring in the territory of the latter Contracting Party, shall be accorded by the said Contracting Party treatment, as regards restitution, indemnification, compensation and other settlements no less favorable than that accorded to the investors of its own or any third State, whichever is more favorable to the investor concerned.

Article 6 TRANSFERS

1, Each Contracting Party shall, subject to its laws and regulations, guarantee to the investors of the other Contracting Party the transfer of their investments and returns held in its territory, including:

- (a) profits, dividends, interests and other legitimate income;

- (b) proceeds obtained from the total or partial sale or liquidation of investments;
- (c) payments pursuant to a loan agreement in connection with investments;
- (d) royalties or fees in relation to intellectual and industrial property rights referred to in Paragraph 1 (d) of Article 1;
- (e) payments of technical assistance or technical service fee, management fee;
- (f) payments in connection with contracting projects;
- (g) earnings of nationals of the other Contracting Party who work in connection with an investment in its territory.

2, Nothing in Paragraph 1 of this Article shall affect the free transfer of compensation paid under Article 4 and 5 of this Agreement.

3, The transfer mentioned above shall be made in a freely convertible currency and at the prevailing market rate of exchange applicable within the Contracting Party accepting the investments and on the date of transfer.

4, In the absence of a market for foreign exchange, the rate to be used shall be the most recent exchange rate for the conversions of currencies into Special Drawing Rights.

Article 7 SUBROGATION If one Contracting Party or its designated agency makes a payment to its investors under a guarantee or a contract of insurance against non-commercial risks it has accorded in respect of an investment made in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

- (a) the assignment, whether under the law or pursuant to a legal transaction in the former Contracting Party, of any rights or claims by the investors to the former Contracting Party or to its designated agency, as well as,
- (b) that the former Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and enforce the claims of that investor and assume the obligations related to the investment to the same extent as the investor.

Article 8 SETTLEMENT OF DISPUTES BETWEEN CONTRACTING PARTIES

1, Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled with consultation through diplomatic channel.

2, If such a dispute cannot thus be settled within six (6) months subsequent to the beginning of the consultation, it shall, upon the request of either Contracting Party, be submitted to an ad hoc arbitral tribunal.

3, Such tribunal comprises of three arbitrators. Within three (3) months of the receipt of the written notice requesting arbitration, each Contracting Party shall appoint one arbitrator. Those two arbitrators shall, within further two (2) months, together select a national of a third State having diplomatic relations with both Contracting Parties as Chairman of the arbitral tribunal.

4, If the arbitral tribunal has not been constituted within five (5) months from the receipt of the written notice requesting arbitration, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the president is a national of either Contracting Party or is otherwise prevented from discharging the said functions, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party or is not otherwise prevented from discharging the said functions shall be invited to make such necessary appointments.

5, The arbitral tribunal shall determine its own procedure and shall reach its award in accordance with the provisions of this Agreement and the principles of international law accepted by both Contracting Parties.

6, The arbitral tribunal shall reach its award by a majority of votes. Such award shall be final and binding upon both Contracting Parties. The arbitral tribunal shall, upon the request of either Contracting Party, explain the reasons of its award.

7, Each Contracting Party shall bear the costs of its appointed arbitrator and of its representation in arbitral proceedings. The relevant costs of the Chairman as well as any other cost of the tribunal shall be borne in equal parts by the Contracting Parties.

Article 9 SETTLEMENT OF DISPUTES BETWEEN INVESTORS AND ONE CONTRACTING PARTY

1, Any dispute between an investor of one Contracting Party and the other Contracting Party in connection with an investment in the territory of the other Contracting Party shall, as far as possible, be settled amicably through consultations between the parties to the dispute.

2, If the dispute cannot be settled through consultations within six (6) months from the date it has been raised by either party to the dispute, it shall be submitted by the choice of the investor, either to the competent court of the State where the investment was made, or to international arbitration.

3, In case of international arbitration, the dispute shall be submitted, at the option of the investor, to: (a) International Center for Settlement of Investment Disputes (ICSID) under the Convention on the Settlement of Disputes between States and Nationals of Other States, done at Washington on March 18, 1965; or (b) An ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); Provided that the Contracting Party involved in the dispute may require the investor concerned to go through the domestic administrative review procedures specified by the laws and regulations of that Contracting Party before the submission to international arbitration.

4, Once the investor has submitted the dispute to the competent court of the State where the investment was made, to the ICSID, or to the ad hoc arbitral tribunal referred to in Paragraph 2 and 3 of this Article, the choice of one of the three procedures shall be final.

5, The arbitral tribunal shall make arbitral award based on:

- (a) provisions of this Agreement;
- (b) laws of the State where the investment was made including its rules on the conflict of laws;
- (c) the principles of international law accepted by both Contracting Parties;
- (d) specific bilateral agreements on investment between the Contracting Parties;
- (e) other international treaties on investment to which both Contracting Parties are or may become parties.

6, The arbitral award shall be final and binding upon both parties to the dispute. Both Contracting Parties shall commit themselves to the enforcement of the award.

Article 10 OTHER OBLIGATIONS

1, If the legislation of either Contracting Party or international obligations existing at present or established hereafter between the Contracting Parties result in a position entitling investments by investors of the other Contracting Party to a treatment more favorable than is provided for by the Agreement, such position shall not be affected by this Agreement.

2, Each Contracting Party shall observe any commitments it may have entered into with the investors of the other Contracting Party as regards to their investments.

Article 11 APPLICATION This Agreement shall apply to investment made prior to or after its entry into force by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the Contracting Party concerned, but not apply to the dispute arose before its entry into force.

Article 12 CONSULTATIONS

1, The representatives of the Contracting Parties could hold meetings from time to time for the purpose of:

- (a) reviewing the implementation of this Agreement;
- (b) exchanging information and investment opportunities;
- (c) resolving disputes arising out of investments;
- (d) forwarding proposals on promotion of investment;
- (e) studying other issues in connection with investment.

2, Where either Contracting Party requests consultation on any matter of Paragraph 1 of this Article, the other Contracting Party shall give prompt response through diplomatic channel and the consultation be held alternatively in Beijing and Cotonou.

Article 13 ENTRY INTO FORCE, DURATION AND TERMINATION

1, This Agreement shall enter into force on the thirtieth (30) day following the date on which both Contracting Parties have notified each other in writing that their respective internal legal procedures necessary therefor have been fulfilled.

2, This Agreement shall remain in force for a period of ten (10) years and shall thereafter remain in force for the same term until either Contracting Party notifies the other in writing to terminate it six (6) months before the expiration of such a period.

3, With respect to investments made prior to the date of termination of this Agreement, the provisions of this Agreement shall continue to be effective for a further period of ten (10) years from such date of termination.

Article 14 AMENDMENT This Agreement may be amended by written agreement between the Contracting Parties. Any amendment shall enter into force under the same procedures required for entry into force of this Agreement. IN WITNESS WHEREOF the undersigned, duly authorized thereto by respective Governments, have signed this Agreement. Done in duplicate in Beijing on February 18, 2004, in the Chinese, French and English languages, all texts being equally authentic.

For the Government of

For the Government of
The People's Republic of China

The Republic of Benin